

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

TIMOTHY E. KECK, SECRETARY OF THE)	
KANSAS DEPARTMENT FOR AGING)	
AND DISABILITY SERVICES,)	
)	
PLAINTIFF,)	
v.)	CASE NO. 5:18-CV-4062
)	
JOSEPH SCHWARTZ,)	
ROSIE SC! WARTZ,)	
LOUIS SCHWARTZ,)	
MICHAEL SCHWARTZ,)	
SKYLINE HEALTHCARE, LLC, and)	
DOROTHY HEALTHCARE MANAGEMENT, LLC,)	
DEFENDANTS.)	

COMPLAINT

Comes now, Timothy E. Keck, Secretary of the Kansas Department for Aging and Disability Services (hereinafter "KDADS" and/or "Secretary"), by and through his attorney, Bryan W. Smith, and for his cause of action alleges and states as follows:

PARTIES

1. The Defendant, Joseph Schwartz (hereinafter referred to as "Schwartz"), is a resident of the State of New Jersey and may be served with process at 505 Marlboro Road, Woodridge, New Jersey, 07075.

2. The Defendants, Rosie Schwartz, Louis Schwartz and Michael Schwartz (hereinafter referred to as "Schwartz"), are also residents of the State of New Jersey and may be served with process at 505 Marlboro Road, Woodridge, New Jersey, 07075.

3. Defendant Skyline Healthcare, LLC (hereinafter referred to as "Skyline") operates multiple adult care homes in the State of Kansas, licensed by the Secretary, and may be served by serving Joseph Schwartz, at 505 Marlboro Road, Woodridge, New Jersey, 07075.

4. Dorothy Healthcare Management, LLC is a wholly owned or controlled subsidiary Skyline and is a foreign LLC, whose Resident Agent is Cogency Global, Inc., and may be served with process at 2101 SW 21st Street, Topeka, Kansas, 66604.

JURISDICTION AND VENUE

5. Plaintiff hereby incorporates Paragraphs 1 through 4 as though fully set forth herein.

6. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(e) and 28 U.S.C. § 1331.

7. Venue lies with this District Court pursuant to 28 U.S.C. § 1391(b) and 28 U.S.C. § 1367.

8. The Court has jurisdiction over the Defendants based upon their transaction of business within this judicial district.

INTRODUCTION

9. Plaintiff hereby incorporates Paragraphs 1 through 8 as though fully set forth herein.

10. The Defendants directly and indirectly operate and control nursing homes in the State of Kansas utilizing the corporate defendants named herein and through Great Plains Healthcare LLC.

11. In addition the Defendants also provide these nursing homes with various administrative and management services.

12. Upon information and belief, Defendant Joseph Schwartz is the sole member of Skyline Healthcare and Dorothy Healthcare management LLC, thereby making Mr. Schwartz the effective owner of all of the LLC Defendants.

13. The Defendants jointly and deliberately syphoned cash from the nursing homes depleting them of the ability to make payroll, purchase patient supplies and food, and to otherwise provide the quality care that the residents in the nursing homes deserve.

14. That said actions were part of a nationwide scheme orchestrated by the Defendants to defraud the nursing home residents and employees.

15. The Defendants were withholding from employees' paychecks some amounts for health insurance and other benefits but were failing to provide or purchase health insurance.

16. Within the State of Kansas, the Defendants were operating or attempting to operate the following facilities:

<u>Facility Name</u>	<u>County Court</u>
Chase County Care & Rehabilitation Center, LLC	Chase
Downs Care & Rehabilitation Center, LLC	Osborne
Edwardsville Care & Rehabilitation Center, LLC	Wyandotte
El Dorado Care & Rehabilitation Center, LLC	Butler
Eskridge Care & Rehabilitation Center, LLC	Wabaunsee
Kaw River Care & Rehabilitation Center, LLC	Wyandotte
Lansing Care & Rehabilitation Center, LLC	Leavenworth
Neodesha Care & Rehabilitation Center, LLC	Wilson
Parkway Care & Rehabilitation Center, LLC	Wyandotte
Pittsburg Care 8t, Rehabilitation Center, LLC	Crawford
Spring Hill Care & Rehabilitation Center, LLC	Johnson
Wakefield Care & Rehabilitation Center, LLC	Clay
Wellington Care & Rehabilitation Center, LLC	Sumner
Wichita Care & Rehabilitation Center, LLC	Sedgwick
Wilson Care & Rehabilitation Center, LLC	Ellsworth

17. Since August of 2017, 18 checks received from Skyline associated with bed tax for each facility had bounced.

18. On March 28, 2017, the Secretary filed an Application for the Appointment of a Receiver pursuant to K.S.A. 39-954 and a Motion for Ex Parte Temporary Restraining Order.

19. On April 6, 2018, the Supreme Court of Kansas, pursuant to K.S.A. 60-242 granted a Motion for Consolidation of Multi-District Litigation and Transfer the cases to the District Court of Johnson County under case number 2018-CV-1688.

20. These Defendants are embroiled in litigation for similar schemes throughout the United States and in states including but not limited to Nebraska, South Dakota, Pennsylvania, Florida and Arkansas.

21. The Schwartz Defendants exercised complete domination and control of the finances, policies and business practices of all of the Defendants.

22. The corporate entities were mirror instruments of the Defendants Schwartz.

23. The subsidiaries and corporate defendants acted only as alter egos of Defendants Schwartz.

24. Upon information and belief, Skyline and Dorothy Healthcare were grossly undercapitalized and remain so as of this date.

COUNT I

Breach of Fiduciary Duty

25. Plaintiff hereby incorporates Paragraphs 1 through 24 as though fully set forth herein.

26. The Defendants owed fiduciary duty to the employees of the nursing homes controlled, operated and/or serviced by Defendants and also the State of Kansas as they withheld funds from employee paychecks to utilize those funds as represented.

27. The Defendants breached their fiduciary duty by failing to provide health insurance with the funds withheld from employee paychecks.

28. As a direct and proximate result of this breach, the State of Kansas has incurred substantial expenses funding insurance for employees who were not provided with health insurance.

29. Further, Defendants did not purchase supplies and other items necessary for the operation of the nursing homes thereby causing the State of Kansas to incur substantial sums purchasing and providing the items that should have been purchased and provided by Defendants.

Wherefore, Secretary Keck prays for judgment against the Defendants and each of them in an amount in excess of \$75,000, for costs and for such other and further relief as the Court deems just and equitable.

COUNT II

FRAUD

30. Plaintiff hereby incorporates Paragraphs 1 through 29 as though fully set forth herein.

31. Defendants have taken active steps to defraud the State of Kansas.

32. Defendants have made material misrepresentations of material facts by representing that Skyline, Dorothy Healthcare, and the 15 limited liability companies operating the nursing facilities were validly operating and separately existing business entities and adequately capitalized to do business.

33. Plaintiff relied on these representations in authorizing Defendant Schwartz to operate nursing facilities in this State.

34. The Citizens of the Kansas as represented by the Plaintiff+ was damaged by this reliance.

35. Plaintiff and the approximately 845 residents of these nursing facilities will continue to be injured for which they seek redress.

Wherefore, Secretary Keck prays for judgment against the Defendants and each of them in an amount in excess of \$75,000, for costs and for such other and further relief as the Court deems just and equitable.

Respectfully submitted,

SMITH LAW FIRM

/s/ Bryan W. Smith

Bryan W. Smith, KS 15473; MO 43916
5930 SW 29th Street, Suite 200
Topeka, KS 66614-2538
Phone: 785-234-2453
Fax: 785-234-2472
[Email: bryan@bryansmithlaw.com](mailto:bryan@bryansmithlaw.com)
Attorney for Defendant

DEMAND FOR JURY TRIAL

Comes now the Plaintiff, by and through counsel, Bryan W. Smith, and hereby demand a trial by jury.

/s/ Bryan W. Smith

Bryan W. Smith, KS 15473; MO 43916
Attorney for Plaintiff